



## Ohio Administrative Code

### Rule 1501:13-6-03 Small operator assistance program.

Effective: January 17, 2016

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(A) General.

(1) The small operator assistance program (S.O.A.P.) governs the procedures for providing financial assistance to qualified small mine operators who request assistance under division (B)(3) of section 1513.07 of the Revised Code for:

(a) The determination of the probable hydrologic consequences of mining and reclamation under division (B)(1)(k) of section 1513.07 of the Revised Code including the engineering analyses and designs necessary for the determination;

(b) The geologic drilling and statement of the results of physical and chemical analyses of test borings or core samples required under division (B)(1)(o) of section 1513.07 of the Revised Code;

(c) The development of cross-section maps and plans required under division (B)(1)(n)(i) of section 1513.07 of the Revised Code;

(d) The collection of archaeological information required under division (B)(1)(m) of section 1513.07 of the Revised Code and any other archaeological and historical information required by the chief, and the preparation of plans necessitated thereby;

(e) Pre-blast surveys required under division (E) of section 1513.161 of the Revised Code; and

(f) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the chief under Chapter 1513. of the Revised Code.

(2) The objective of this rule is to meet the intent of division (B)(3) of section 1513.07 of the Revised Code by providing financial assistance to qualified small operators.



(3) The chief shall provide financial assistance under division (B)(3) of section 1513.07 of the Revised Code to the extent funds are appropriated by congress specifically for this program.

(4) The chief shall:

(a) Review requests for financial assistance and determine eligible applicants;

(b) Develop and maintain a list of qualified laboratories;

(c) Select and pay laboratories, or reimburse eligible applicants for paying laboratories that have been selected by the division of mineral resources management for services rendered; and

(d) Conduct periodic on-site evaluations of the program activities with the appropriate small operator and laboratories.

(5) The chief shall develop policies and procedures for:

(a) Data acquisition, analysis and interpretation;

(b) Model contract stipulations; and

(c) Qualification of labs.

(6) The chief shall ensure that applicable equal opportunity in employment provisions are included within any contract or other procurement documents.

(B) Program services. To the extent possible with available funds, the chief shall, for eligible small operators who request financial assistance, select and pay a qualified laboratory or reimburse an eligible operator to hire a qualified laboratory selected by the division of mineral resources management to provide those services requested and eligible under paragraph (A) of this rule.

(C) Eligibility for assistance.



(1) An applicant is eligible for assistance if he or she:

(a) Intends to apply for a permit pursuant to Chapter 1513. of the Revised Code; and

(b) Establishes that his or her probable total actual and attributed annual production from all locations during any consecutive twelve-month period either during the term of his or her permit or during the first five years after issuance of his or her permit, whichever period is shorter, will not exceed three hundred thousand tons.

(2) In determining an applicant's eligibility his or her production figures will be verified by referencing production figures on file at the Ohio department of taxation and the Ohio department of natural resources. Production from the following operations shall be attributed to the permittee:

(a) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns ten per cent or more interest;

(b) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own ten per cent or more of the applicant's operation;

(c) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and

(d) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(3) An applicant is not eligible if he or she organizes or reorganizes his or her company solely for the purpose of obtaining assistance under this rule.

(D) Filing for assistance. Each applicant shall submit the following information to the chief:

(1) A statement of intent to file a permit application;



- (2) The names, addresses and telephone numbers of:
  - (a) The potential permit applicant; and
  - (b) The potential operator if different from the applicant;
- (3) The business structure of the applicant, i.e., sole proprietorship, partnership, etc.;
- (4) Applicant's three most recent "out of state" permits, if any;
- (5) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under paragraph (C) of this rule. The schedule shall include for each location:
  - (a) The name under which coal is or will be mined and severance tax account number of any other company from which production is attributed to the applicant;
  - (b) The permit number and mine safety and health administration identification number;
  - (c) The actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant; and
  - (d) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant;
- (6) The federal tax identification number of the applicant;
- (7) A statement of the anticipated starting and termination dates of the proposed mining operations;
- (8) A description of the method of coal mining operation proposed and the number of acres to be affected by the proposed mining;



(9) A topographic map on a scale as required by rule 1501:13-4-09 of the Administrative Code which shows:

(a) The area of land to be permitted;

(b) The adjacent area;

(c) The location of any existing or proposed test borings;

(d) The location and extent of known workings of any underground mines; and

(e) Any additional information required by the chief;

(10) Copies of documents showing that:

(a) The applicant has a legal right to enter and commence mining within the permit area; and

(b) A legal right of entry has been obtained for the office of surface mining, the chief and his or her authorized representatives, and laboratory personnel to inspect the lands which may be affected to collect environmental data or install necessary instruments; and

(11) A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.

(E) Application approval and notice.

(1) If the chief finds the applicant eligible, and he or she does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, he or she shall provide for the acquisition of the necessary information by qualified laboratories to fulfill the data requirements of paragraph (F) of this rule.

(2) If the chief finds the applicant eligible, the chief shall inform the applicant in writing that the application is approved. If the chief finds the applicant ineligible, the chief shall inform the applicant



in writing that the application is denied and shall state the reasons for denial.

(3) The granting of assistance under this part shall not be a factor in decisions by the chief on a subsequent permit application.

(F) Data requirements.

(1) The chief shall determine the data collection requirements for each applicant or group of applicants. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the applicant. The data requirements will be based on:

(a) The extent of currently available hydrologic and overburden analysis data for the applicable area provided by the division of mineral resources management; and

(b) The data collection and analysis guidelines developed and provided by the chief.

(2) The data, results, analyses, and statements provided to the chief shall be sufficient to satisfy the requirements for:

(a) The determination of the probable hydrologic consequences of the mining and reclamation operations on the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination, shall be made by a qualified laboratory. The data for this determination shall include that information required by division (B)(1)(k) of section 1513.07 of the Revised Code and paragraph (E)(2) of rule 1501:13-4-05 or paragraph (E)(2) of rule 1501:13-4-14 of the Administrative Code;

(b) The drilling and statement, by a qualified laboratory, of the result of test borings or core samplings from the proposed permit area, including that information required by division (B)(1)(o) of section 1513.07 of the Revised Code and paragraphs (C)(2) and (C)(3) of rule 1501:13-4-04 or paragraph (C)(2) of rule 1501:13-4-13 of the Administrative Code, unless this requirement is waived as provided by division (B)(1)(o) of section 1513.07 of the Revised Code;

(c) The development of cross-section maps and plans required by division (B)(1)(n)(i) of section



1513.07 of the Revised Code and paragraph (B) of rule 1501:13-4-08 or paragraph (B) of rule 1501:13-4-08.1 of the Administrative Code;

(d) The collection of archeological information required under division (B)(1)(m) of section 1513.07 of the Revised Code and paragraph (A) of rule 1501:13-4-04 or paragraph (A) of rule 1501:13-4-13 of the Administrative Code, any other archaeological and historical information required by the chief, and the preparation of plans necessitated thereby;

(e) Pre-blast surveys required under division (E) of section 1513.161 of the Revised Code and paragraph (C) of rule 1501:13-9-06 of the Administrative Code; and

(f) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the chief under Chapter 1513. of the Revised Code and paragraph (P) of rule 1501:13-4-05 or paragraph (R) of rule 1501:13-4-14 of the Administrative Code.

(3) Data availability. Data collected under this program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment shall be made available. The program administrator shall develop procedures for interstate coordination and exchange of data.

(G) Qualified laboratories.

(1) General.

(a) As used in this rule, "qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide services for the required determination or statement under the S.O.A.P. program.

(b) The chief shall establish a list of qualified laboratories which may be used under the procedures of this rule.



(c) Persons who desire to be included in the list of qualified laboratories shall apply to the division of mineral resources management and provide such information as is necessary to establish the qualifications required by paragraph (G)(2) of this rule.

(2) Basic qualifications.

(a) To qualify for designation, the laboratory shall demonstrate that it:

(i) Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

(ii) Has adequate space for material preparation and cleaning and sterilizing equipment, and has stationary equipment, storage, and space to accommodate periods of peak work loads;

(iii) Meets the requirements for the Occupational Safety and Health Act, 29 U.S.C. 651 et seq., as amended, or the equivalent state safety and health program;

(iv) Has analytical, monitoring and measuring equipment capable of meeting applicable standards and methods;

(v) Is capable of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic or analytical methods in accordance with the requirements of these rules. Methods or guidelines for data acquisition recommended by the chief may also be used; and

(vi) Is capable of collecting necessary field data and samples in accordance with the requirements of these rules.

(b) The qualified laboratory shall be capable of performing services for either the determination(s) or statement(s) under paragraph (F)(2) of this rule.

(3) Subcontractors. Subcontractors may be used to provide some of the required services under this rule, provided their use is identified at the time a determination is made that a firm is qualified and they meet the requirements specified by the chief.





(H) Assistance funding.

(1) Use of funds. Funds specifically authorized to cover payments for services rendered by qualified laboratories under this program shall not be used to cover state administrative costs. In addition to the basic services authorized under paragraph (A)(1) of this rule the following costs are allowed under payments to qualified laboratories or eligible small operators provided that on a case-by-case basis the information is determined necessary to complete the determination and statement required under divisions (B)(1)(k) and (B)(1)(o) of section 1513.07 of the Revised Code:

(a) Observation well drilling and development for ground water monitoring;

(b) Water availability information;

(c) Soils information;

(d) Land use information; and

(e) Necessary maps, charts and diagrams.

(2) Allocation of funds. The chief shall, to the extent practicable, establish procedures for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to this rule.

(I) Applicant liability.

(1) The applicant shall reimburse the division of mineral resources management for the cost of the services performed pursuant to this rule if the applicant:

(a) Submits false information;

(b) Fails to submit a permit application within one year from the date of receipt of the approved laboratory report;



(c) Fails to mine after obtaining a permit;

(d) Produces, from actual and attributed production, more than three hundred thousand tons for all locations during any consecutive twelve-month period of mining either during the term of the permit for which the assistance is provided or during the first five years after issuance of the permit, whichever is shorter; or

(e) Sells, transfers, or assigns the permit to another person and the transferee's total actual and attributed production exceeds the three-hundred-thousand-ton annual production limit during any consecutive twelve-month period of the remaining term of the permit. Under this paragraph, the applicant and its successor are jointly and severally obligated to reimburse the division of mineral resources management.

(2) The chief may waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith.

(J) For dates of federal rules and federal laws referenced in this rule, see rule 1501:13-1-14 of the Administrative Code.